

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South
Carolina Department of Insurance, and the
South Carolina Department of Insurance,

Plaintiffs,

vs.

Jessica K. Altman, as Rehabilitator of Senior
Health Insurance Company of Pennsylvania,
Patrick H. Cantilo, as Special Deputy
Rehabilitator of Senior Health Insurance
Company of Pennsylvania, and Senior Health
Insurance Company of Pennsylvania in
Rehabilitation,

Respondents.

Civil Action No. 2020-CP-40-05802

**PLAINTIFFS' MOTION FOR
TEMPORARY INJUNCTION
AND MEMORANDUM IN SUPPORT**

**A Priority Matter Pursuant To
Rule 40(H), SCRPC**

PLEASE TAKE NOTICE that Plaintiffs Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance, by and through the undersigned counsel, hereby move the Court, pursuant to Rule 65, SCRPC, for an Order issuing a temporary injunction prohibiting Defendants Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation from taking any action in furtherance of their expressed plans to, without first obtaining required regulatory approval from the State, raise premium rates and/or reduce benefits under certain binding contracts of insurance issued in the State of South Carolina or held by residents of this State, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that they select rates or benefits different from those authorized by the

Department and called for under the terms of the contract, charging additional premium or withholding, delaying or encumbering benefits in whole or in part.

The grounds for the temporary injunction sought by Plaintiffs are (1) Plaintiffs are likely to prevail on the merits; (2) irreparable injury, loss or damage will result to policyholders and the State in the absence of a temporary injunction; (3) a temporary injunction is necessary to prevent (a) irreparable damage to Plaintiffs' ability to discharge their legislatively-charged duty to enforce the insurance laws of this State, (b) significant disruption of the insurance marketplace within this State and (c) unnecessary confusion among and harm to policyholders; and (4) no adequate remedy at law exists. The following facts and circumstances demonstrate that a temporary injunction is proper and necessary to enforce the insurance laws of this State and to protect policyholders:

1. Plaintiff Raymond G. Farmer is the Director of the South Carolina Department of Insurance (the "Director").

2. Plaintiff South Carolina Department of Insurance (the "Department") is an agency of the State of South Carolina created and charged by the South Carolina General Assembly to regulate the business of insurance in this State. *See generally* S.C. Code Ann. §§ 38-1-10 *et seq.* ("The Insurance Law").

3. Defendant Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed Rehabilitator of Senior Health Insurance Company of Pennsylvania (the "Rehabilitator") by order of the Commonwealth Court of Pennsylvania ("Commonwealth Court") dated January 29, 2020 (the "Rehabilitation Order").

4. Defendant Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy Rehabilitator (the "SDR") of Senior Health Insurance Company of Pennsylvania. He generally has the power to act on behalf of the Rehabilitator, subject to the control and direction of the

Rehabilitator.

5. Defendant Senior Health Insurance Company of Pennsylvania (“SHIP”) is a stock limited life and health insurance company that administers a closed block of long-term care (“LTC”) insurance policies. It is domiciled in the Commonwealth of Pennsylvania.

6. SHIP was issued a certificate of authority to conduct the business of insurance in South Carolina on April 8, 1988. Its book of business consists almost entirely of policies covering long-term care services. SHIP has not sold new policies since 2003, and only a fraction of its original LTC business remains in force.

7. The average SHIP LTC policyholder age is approximately 87 years of age, and the average claimant is approximately 90 years old. At present, there are approximately 300 policies issued in South Carolina by SHIP, and Plaintiffs are informed and believe that there may be other SHIP policyholders residing in South Carolina whose policies were issued in other states.

8. SHIP has been insolvent since at least December 31, 2018, when it reported a deficit of approximately a half-billion dollars as of that date. (Exhibit A, Transcript of Pa. Proceedings (excerpt) at p. 46 ln. 9-10.) Since then, SHIP’s financial condition has continued to deteriorate, and the current deficit is approximately \$1.2 billion. (Exh. A at p. 45 ln. 2-5, p. 240 ln 17-25, p. 292 ln. 11-12.)

9. Despite SHIP being hopelessly insolvent, the Pennsylvania Insurance Department (“PID”) has not sought a declaration of insolvency, which would have triggered guaranty association coverage and protection for policyholders in the affected states.

10. PID did file an application to place SHIP into rehabilitation in the Commonwealth Court of Pennsylvania on January 23, 2020. *See generally* <https://www.shipltc.com/court-documents>.

11. Neither Plaintiffs nor SHIP policyholders were parties to these proceedings, and policyholders were not represented by class representatives or counsel.

12. A Second Amended Rehabilitation Plan (Plan) was filed on or about May 3, 2021 and approved by a single judge of the Commonwealth Court of Pennsylvania by order filed on August 24, 2021, which was amended by order entered on November 4, 2021. An appeal is pending before the Pennsylvania Supreme Court, as is an application for stay.

13. Central to the Plan is a scheme under which Defendants will impose rates for use nationwide, bypassing individual state regulatory approval statutes. These increases are extreme, in some cases more than doubling the amount of premium to be paid and can reasonably be expected to force unnecessary policy lapses. Policyholders may be able to avoid some of the increases, but only if they agree to lower their contractually-guaranteed benefits. (Exhibit B, Rehab. Plan (excerpt)).

14. The Plan contains a so-called “opt-out” process under which SHIP submits rates to individual states that “opt-out” of the nationwide rate under those states’ respective rate approval statutes. However, it also contains the coercive proviso that if an “opt-out” state does not approve the rate demanded, that state’s policyholders will be punished in the form of a further downgrade to their benefits. (Exh. B at p. 108-118.)

15. The punitive nature of the “opt-out” provision not only renders this feigned deference to state laws meaningless, but it also increases the already adverse effect of the Plan on affected policyholders. Moreover, the benefit reduction strategy described in the amended plan will adversely impact policyholder rights when the plan fails, and SHIP is eventually placed into liquidation.

16. Although Defendant Cantilo has characterized the receivership as involving a “workout plan,” by definition, such plans are a negotiated agreement between the debtor (which in

this case would be SHIP) and its creditors (which would be policyholders). (Exh. B at p. 79 ln. 3-6.)

Here, however, the so-called “workout plan” consists of the debtor *unilaterally* (a) dictating the new terms in a contract under which the creditors have fully performed, (b) imposing draconian terms on the creditors in the form of extreme premium increases and reduced benefits, both of which are likely to force policy lapses and (c) stripping out of those policies the statutory protections relating to those policies that became part and parcel of the contract at the time of its formation. *E.g., Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283 (Ct. App. 2010) (statutory provisions relating to an insurance contract are part of the contract as a matter of law); *see also* S.C. Code Ann. § 38-61-10 (2015) (contracts of insurance on property, lives, or interests in this State and all contracts of insurance the applications for which are taken within the State are made within this State and are subject to its laws).

17. The Defendants have given states only until November 15, 2021, to provide written notice, under oath, of their decision to “opt-out” of a Plan they never opted in. (Exhibit C, SHIP Notice & FAQs, Notice at p.2 & State Opt-Out Election Form.)

18. Like all LTC insurers licensed in this State, SHIP has always submitted proposed rate increases to the South Carolina Department of Insurance for review and approval in accordance with South Carolina law. Over the past decade, SHIP has submitted proposed rate increases to the South Carolina Department of Insurance in 2011, 2012, 2013, 2017, and 2018, all of which were approved. The sole exception is the 2018 rate increase, which the Department disapproved in 2019 after it was clear that SHIP was hopelessly insolvent.

19. The Defendants acknowledge that the Plan places additional burdens on policyholders and is intended to decrease SHIP’s deficit by increasing premium revenue and reducing policyholder benefits. (Exhibit B at p. 11-21).

20. Defendant Cantilo has admitted under oath that, “it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan . . . would substantially reduce the deficit.” (Exhibit A at p. 80 ln. 6-12.). The sole purpose of the Plan is not to honor its policyholder obligations but to reduce the liabilities of the Plan before it goes into liquidation.

21. The Defendants have also admitted that SHIP will benefit at the expense of policyholders and that the opt-out provision further harms policyholders: “In general, the Rehabilitator believes that states opting out is likely to help reduce SHIP’s deficit more than states opting in. This is because it is anticipated that Opt-out States will approve lower rate increases than the Rehabilitator seeks. This will result in *additional downgrades which reduce the deficit faster than additional premium*. However, the Rehabilitator DOES NOT recommend that states *opt out* because that *is generally expected to be disadvantageous to affected policyholders*.” (Italics supplied.) (Exhibit C, FAQ 9.)

22. The Defendant Cantilo has also admitted that the purpose of the Plan is to transfer the burden of insolvency from legislatively-crafted guaranty associations and their member insurers. (Exh. A at p. 78 ln. 19-23, p. 79 ln. 4, p. 83-84 ln. 20-18, p. 289 ln. 9-18 & p. 292 ln. 11-25.) Specifically, he spoke in terms of “taxpayers,” however, this is a euphemistic and tangential reference to tax offsets for guaranty association assessments on large insurers. Provisions in some state guaranty association statutes provide for partial premium tax offsets for member insurers that are assessed by their guaranty association to pay claims against insolvent insurers. *E.g.*, 40 Pa. Stat. § 991.1711 (credits for assessments paid); S.C. Code Ann. § 38-29-160. The larger an insurer’s market share in total premium, the larger its assessment. The larger the assessment, the larger the offset to premium tax. In attempting to disguise their desire to limit assessments on large insurers as anxious concern for taxpayers, Defendants make the unspoken (and speculative) assumption that

other taxpayers will be required to make up for any revenue lost to such premium tax offsets. Thus, Defendants have crafted a plan to circumvent not only state laws regulating rates and forms, but also legislatively-crafted mechanisms for the distribution of the costs of paying claims against insolvent insurers. In doing so, they elevate the interests of large insurance companies over those of policyholders and usurp the policy decisions of democratically-elected legislatures.

23. In other words, despite SHIP's inevitable liquidation, or perhaps because of it, Defendants are attempting to use the rehabilitation proceedings to coerce vulnerable elderly policyholders into paying confiscatory rates, accepting substantially less benefits than what they are entitled to under their contracts, or even lapsing on their policies altogether, all while skirting the laws of other states. The purpose of this otherwise feckless exercise is to permanently reduce the amount of guaranty association protection benefits each policyholder would receive in a liquidation, resulting in savings to large insurers in the form of substantially smaller guaranty association assessments.

24. Defendants estimate that the costs of administration of the rehabilitation plan are approximately \$200,000,000, which costs are paid from SHIP's assets; however, the Pennsylvania proceedings do not provide for an accounting. (Exhibit B at p.28, Table 1, ln. 2.).

25. With the passage of the McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015, in 1945, “Congress . . . declare[d] that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.”

26. “The primary state insurance regulatory functions remain as they have been since the enactment of [the] McCarran-Ferguson [Act]. This allows . . . states to perform solvency oversight of

the U.S. insurance industry and to regulate insurer behavior in the marketplace.” *State Insurance Regulation*, National Association of Insurance Commissioners (NAIC), Center for Insurance Policy and Research (CIPR) (2011), https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf.

27. “State legislatures are the public policymakers that establish . . . broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance regulators operate. They establish laws which grant regulatory authority to regulators and oversee state insurance departments and approve regulatory budgets.” *Id.*

28. “State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers and ensures that promises made by insurers are kept. Insurance regulation is structured around several key functions, including insurer licensing, producer licensing, product regulation (review and approval of rates (including benefits) and forms), market conduct, financial regulation and consumer services.” *Id.*

29. “State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. The nature of the regulatory reviews of rates, rating rules and policy forms varies somewhat among the states depending on their laws and regulations.” *Id.*

30. The South Carolina General Assembly has properly delegated regulatory authority under the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, to the Department, prescribing and approving detailed and extensive statutes and regulations governing LTC policies and rates, including provisions for the approval of rates by the Department. S.C. Code Ann. §§ 38-72-10 *et seq.*; S.C. Code Regs. § 69-44.

31. In S.C. Code Ann. § 38-25-10, the South Carolina General Assembly makes the following Declaration:

(a) The General Assembly declares that it is concerned with the protection of residents of this State against acts by insurers not authorized to conduct an insurance business in this State, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this State. In furtherance of this state interest, the General Assembly herein provides . . . [for] proceeding[s] by the director or his designee to enforce or effect full compliance with the insurance laws of this State. In so doing, the state exercises its powers to protect residents of this State and to define what constitutes transacting an insurance business in this State and also exercises powers and privileges available to this State by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, 59 Stat. 33; 15 U.S.C., Sections 1011 to 1015, inclusive, as amended [the McCarran-Ferguson Act], which declares that the business of insurance and every person engaged therein are subject to the laws of the several states.

32. Pursuant to S.C. Code Ann. § 38-3-10 (2015), the General Assembly “established a separate and distinct department of this State, known as the Department of Insurance. The department must be managed and operated by a director appointed by the Governor upon the advice and consent of the Senate.”

33. Pursuant to S.C. Code Ann. § 38-3-60 (2015), “The director or his designee must follow the general policies and broad objectives enacted by the General Assembly regarding the operation of the insurance industry in this State.”

34. S.C. Code Ann. § 38-3-110 (2015) sets forth the Director’s responsibilities, which include the duty to:

(1) supervise and regulate the rates and service of every insurer in this State and fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be observed and followed by every insurer doing business in this State. Nothing contained in this title authorizes or requires a review by the department or the director of any order of the director's designee or the deputy director under the Administrative Procedures Act. This item does not grant any additional authority to the director or his designee with regard to insurance rates

other than the ratemaking authority specifically granted to the director or his designee, or the Department of Insurance for certain kinds of insurance in other provisions of this title;

and to:

(2) see that all laws of this State governing insurers or relating to the business of insurance are faithfully executed and make regulations to carry out this title and all other insurance laws of this State, the enforcement or administration of which is not otherwise specifically provided for.

35. Pursuant to S.C. Code Ann. § 38-61-10 (2015), “All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.”

36. Pursuant to the Long-Term Care Insurance Act, S.C. Code Ann. §§ 38-72-10 *et seq.*, “All premium rate schedules for long-term care insurance must be filed with the [South Carolina Department of Insurance] and are subject to the prior approval of the director or his designee.” S.C. Code Ann. § 38-72-75(A). An insurer may not charge a premium to an insured under a policy or contract of long-term care insurance before the applicable premium rate is filed and approved, and an insurer may not change the premium charged to an insured under a policy or contract of long-term care insurance until the applicable premium rate change has been filed with and approved by the Director or his designee. *Id.*

37. In addition, “the director or his designee may hold a public hearing or solicit public comments as a part of the process to review long-term care insurance rate filings received by the director or his designee.” S.C. Code Ann. § 38-72-75(C). Each decision of the Director or his designee about premium rates is subject to review under the Administrative Procedures Act (APA), S.C. Code Ann. § 38-72-75(D).

38. S.C. Code Regs. 69-44 provides for the comprehensive regulation of LTC policies, including rates, forms and required market practices.

39. The public policy of this State is that because the authority to determine what insurance premium rates are just and reasonable is vested in the Department, not even courts should adjudicate what a reasonable rate might be in a collateral proceeding. *Cf. Temporary Services, Inc. v. American Intern. Group, Inc.*, 388 S.C. 348, 351, 697 S.E.2d 527, 529 (2010); § 2:34. Rates—Judicial review, 1 Couch on Ins. § 2:34 (“Ratemaking is generally not a judicial function. Indeed, many jurisdictions have adopted the filed rate doctrine which expressly prohibits courts from imposing rates different than those approved by the state insurance department.”)

40. Pennsylvania’s highest court has made clear that as a creature of statute, an insurance commissioner acting as a rehabilitator “can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language.” *Aetna Cas. and Sur. Co. v. Com., Ins. Dept.*, 638 A.2d 194 (Pa. 1994) (quoting *Commonwealth, Human Relations Commission v. Transit Casualty Insurance Company*, 478 Pa. 430, 438, 387 A.2d 58, 62 (1978)). *See also Koken v. Legion Ins. Co.*, 831 A.2d 1196 (Pa. Commw. 2003), *aff’d sub nom. Koken v. Villanova Ins. Co.*, 878 A.2d 51 (Pa. 2005).

41. Defendants Rehabilitator and SDR have only those powers conferred upon them by 40 Pa. Stat. Ann. §§ 221.1 *et seq.*, which are limited and equivalent to those of new management, and they and insurance companies in rehabilitation, including SHIP, must therefore obey the insurance laws of each the states in which they conduct the business of insurance. *See id.* ((Rehabilitator has “full power to direct and manage” the insurer”). Nowhere in the rehabilitation statutes is there “clear and unmistakable language” permitting a rehabilitator to unilaterally set new rates and policy terms.

42. Although “liquidation” contemplates the end of corporate existence, “rehabilitation” involves the continuance of corporate life and activities and is an effort to restore and reinstate the corporation to its former condition of successful operation and solvency. *Smalls v. Weed*, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987).

43. The Insurers Rehabilitation and Liquidation Act “provides for one procedure in actions involving a rehabilitator, and for a different procedure against a liquidator.” *Id.*

44. Another state’s rehabilitation proceedings do not grant that state jurisdiction over “the whole field.” *See id.*

45. Although the Pennsylvania Commonwealth Court exercises in rem jurisdiction in the rehabilitation proceedings, the res over which that jurisdiction is exercised is the corporation itself, the fictitious entity, not all of the corporation’s property for all purposes and certainly not the rights of all persons wherever situated. The Commonwealth Court may not, simply by reason of the *in rem* nature of the Pennsylvania rehabilitation proceedings, adjudicate the rights of South Carolina policyholders and claimants who are neither parties in the Pennsylvania proceedings nor subject to the jurisdiction of the Commonwealth Court.

46. “Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court’s decree” and “[i]f that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.” *Underwriters Nat’l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass’n.*, 455 U.S. 691, 705 (1982).

47. Neither policyholders nor South Carolina were parties in the proceedings giving rise to this Plan, nor are they bound by the ruling of the Commonwealth Court.

48. The constitutional command of full faith and credit does not compel South Carolina

to defer to a Pennsylvania court's exercise of jurisdiction where, as here, the issue was neither fully and fairly litigated nor involved the same parties as the Pennsylvania litigation.

49. No state, including Pennsylvania, may bind a Nation, particularly as to matter on which the legislatures of each state have spoken. Pennsylvania's erroneous attempt to do so would represent a "policy of hostility to the public Acts" of each of the 45 affected states, resulting in a direct injury to their sovereignty in violation of the Full Faith and Credit Clause. *See Franchise Tax Bd. v. Hyatt*, 578 U.S. 171 (2016); *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981); *Carroll v. Lanza*, 349 U.S. 408 (1955).

50. "The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers*, 306 U.S. at 501; *see also Alaska Packers Ass'n v. Indus. Accident Comm'n.*, 294 U.S. 532, 547 (1935).

51. In addition to being deprived of the opportunity to negotiate the so-called "workout plan," policyholders have had their contract rights stripped of them without the benefit of due process. Policyholders did not receive proper service of process and were not represented by class representatives or independent legal counsel. The Rehabilitator has offered no justification for why policyholders were literally denied their day in court before being stripped of their contractual and procedural rights.¹ Indeed, it is a case cited by the Rehabilitator's own attorneys that provides an

¹ In contrast, several large insurers -- Anthem, Inc., Health Care Service Corporation, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, and UnitedHealthcare Insurance Company -- appeared as intervenors in the proceedings and were represented by counsel. Unsurprisingly, these companies fully supported the Plan. *See, e.g.*, Top 10 health insurance companies in the US, <https://www.insurancebusinessmag.com/us/news/healthcare/top-10-health-insurance-companies-in-the-us-212292.aspx> (23 Aug 2021); Horizon NJ Health, <https://www.horizonnjhealth.com/aboutus/company-overview/company-information>.

example of policyholders being represented by class representatives who engaged in “extensive negotiations” with the insurer and the receiver. *Underwriters Nat. Assur. Co. v. North Carolina Life and Acc. and Health Ins. Guar. Ass'n.*, 455 U.S. 691 (1982).

52. Insurance commissioners as receivers and their deputies are fiduciaries, and as part of their responsibilities are charged with preserving and protecting the rights of policyholders. *E.g.*, *McPherson v. U.S. Physicians Mut. Risk Retention Group*, 99 S.W.3d 462 (Mo. Ct. App. 2003); *Green v. Louisiana Underwriters Ins. Co.*, 571 So.2d 610 (La. 1990); *see also* NAIC Receiver’s Handbook for Insurance Company Insolvencies 333 (2018) (“A Receiver has a fiduciary responsibility to all of the receivership estate’s creditors and is charged with protecting the interests of insureds, creditors and the public generally.”) And yet, these policyholders, who number among the most vulnerable members of our society, now face having to shoulder a financial burden that would otherwise rest, as the legislatures of the affected states intended, with the insurance industry that created and sold the same kind of policies. It is impossible to reconcile the faithful performance of the Rehabilitator’s fiduciary duty with the casual disposal of the contractual and constitutional rights of policyholders.

53. Notwithstanding the clear mandate of South Carolina law, the limited reach of the Pennsylvania proceedings, and the numerous and serious defects in those proceedings, Defendants have made clear their position that SHIP is no longer subject to South Carolina law and that they have no intention to obey it, and have instead given Plaintiffs the deadline of November 15, 2021 to deliver a binding decision regarding the “opt-out” provision and have otherwise evinced their intent to move forward immediately with implementing changes to policies and rates.

54. Plaintiffs seek an order temporarily enjoining Defendants from taking any measure that purports to bypass, impede, supersede, diminish or interfere in any manner with the State of

South Carolina's regulatory authority over changes to the terms of policies and review and approval of insurance rates in this State, and further temporarily enjoining Defendants from communicating in any form or manner with South Carolina policyholders regarding proposed changes to policy terms or rates without prior written approval by the State.

55. A preliminary injunction pursuant to Rule 65(a), SCRCP is warranted under the circumstances.

56. "A preliminary injunction should issue only if necessary to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs., Inc. v. Cent. Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (citing *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). 1984). "When *prima facie* showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Id.* (quoting *D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904)).

57. A temporary injunction to preserve *the status quo ante* is necessary to prevent irreparable harm to South Carolina policyholders. Plaintiffs are specifically charged by the South Carolina General Assembly to uphold the insurance laws of this State. Those laws are designed to protect the policyholders, whose contracts were formed in this State and are subject to its laws and regulations. The State has a strong interest in protecting policyholders and ensuring that its laws are enforced. If those laws are not enforced, and Defendants are permitted to implement their Plan immediately, Plaintiffs will have not upheld their statutory duty and policyholders will be permanently denied basic contractual, procedural and constitutional rights and suffer permanent and substantial economic harm. Even if Plaintiffs were to fine SHIP or suspend or revoke its license,

such after-the-fact measures would not reinstate any permanent or temporary loss of benefits or premium overcharges. The same is true of any lawsuit to recover lost benefits or premium overcharges, which would also be impractical given the advanced age and typically limited means of the victims. They would also not undo the substantial confusion and disruption of the marketplace that would have occurred. Conversely, Defendants need do no more than refrain from violating South Carolina law. If they wish to file for a rate increase in accordance with the laws of the applicable state, including, this one, they have done so in the past and may do so again.

58. Plaintiffs are also likely to prevail on the merits. Defendants' Plan is founded on a clearly erroneous reading of the law that is likely to be overturned on appeal and suffers from several other underlying legal defects. Regardless, the order approving that Plan is not binding on Plaintiffs or policyholders. Both federal and State statutory law support Plaintiffs' position that insurers licensed by Plaintiffs must obey the laws of this State and those contracts issued in this state are subject to South Carolina law.

59. Plaintiffs have therefore made the necessary showing that they are entitled to a temporary injunction - irreparable harm, likelihood of success on the merits, and no adequate remedy at law, thereby establishing grounds for relief pursuant to Rule 65, SCRPC.

60. For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Temporary Injunction prohibiting the Defendants taking any action that would result in prejudice to the rights of policyholders with respect to contracts of insurance subject to the laws of this State or from otherwise interfering with the orderly administration and enforcement of the insurance laws of this State.

61. This motion, and the relief sought herein, are based on and supported by the statutory and decisional law of this State and the United States, the South Carolina Rules of Civil Procedure,

the pleadings and filings in the underlying lawsuit, and such other submissions that may be filed with the Court.

62. Pursuant to Rule 11, SCRCP, the undersigned certifies that consultation with the attorneys for the Defendants prior to the filing of this motion would not serve any useful purpose.

WHEREFORE, Plaintiffs respectfully pray the Court for an order temporarily enjoining Defendants from implementing or enforcing the rehabilitation plan in this State, otherwise interfering with the rights of SHIP policyholders in South Carolina or otherwise violating the insurance laws of this State pertaining to long-term care insurance until the resolution of the appeal in Pennsylvania, with Plaintiffs given leave to apply for an extension upon a showing that it is necessary to protect policyholders and uphold the laws of this State.

Respectfully submitted,

November 12, 2021

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